

# Alabama fan who poisoned Auburn trees competent to stand trial

3:34p.m. EST December 20, 2012

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(Photo: Vasha Hunt, AP)

OPELIKA, Ala. (AP) - Defense attorneys said Thursday that a University of Alabama fan is mentally competent to stand trial on charges of poisoning Auburn University's landmark oak trees, but they still plan to use an insanity defense.

Harvey Updyke, 64, understands the charges against him, the role of the court and can assist with his defense, said Margaret Brown, one of two lawyers representing Updyke.

But his mental health now and his mental health at the time of the offense are "completely different" issues, Brown told a judge. Lawyers still plan to argue that Updyke was suffering from mental problems when the trees were poisoned about two years ago.

With two doctors waiting in court to testify about Updyke's mental condition, Lee County Circuit Judge Jacob A. Walker III canceled a scheduled competency hearing. Walker said he would meet with attorneys in the case on Jan. 9 to discuss a trial date for Updyke, possibly in the spring.

Updyke, wearing a crimson-colored shirt in court, didn't speak during the 30-minute session except to whisper to his lawyers. He previously pleaded not guilty by reason of mental disease or defect to charges that include criminal mischief and desecrating a venerable object.

The judge said it was "very important" for Updyke to maintain a health regimen recommended by experts that the state-run mental health facility that evaluated him, and defense lawyer Andrew Stanley said Updyke was taking medications and doing other things recommended by doctors.

Updyke is accused of poisoning the Toomer's Corner oak trees with a powerful herbicide during Auburn's national championship run in the 2010 football season, which included a 28-27 win over his beloved Alabama team. Auburn football fans roll the trees with toilet paper after a big win, but the oaks are now gnarly and brown; the school already is making plans to replace them.

The judge said Updyke can remain free in the care of a daughter with restrictions that include not driving, but District Attorney Robert Treese said his office still wanted the judge to revoke the bond for Updyke.

In September, Updyke was charged with terrorizing after allegedly making a threatening comment at a Lowe's store in Hammond, La., when workers refused to give him the amount of money he wanted when returning a lawn mower. He is free on bond in that case, and Alabama prosecutors asked the judge to revoke his bond in the tree-poisoning case because of the arrest.

Updyke was once a state trooper in Texas, and Brown said the defense needs mental health records from that state in planning Updyke's court strategy. Brown said the defense also will need to hire an expert to evaluate opinions and demographics in Lee County since statistical evidence could be a key part of a continuing defense bid to move the trial elsewhere.

"I'm not a statistician. I have an opinion but I don't have the statistics to prove it," Brown told the judge.

The judge stopped Updyke's trial in the summer during jury selection after the student newspaper at Auburn reported that Updyke admitted poisoning the trees in remarks during a break outside the courtroom. Updyke's lawyer later said he denied making the confession.

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